

AMENDED IN SENATE AUGUST 9, 2010

AMENDED IN ASSEMBLY APRIL 29, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2068

Introduced by Assembly Member Hill

February 18, 2010

An act to amend Section 1203.4a of the Penal Code, relating to expungement standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 2068, as amended, Hill. Expungement standards.

Existing law, subject to exceptions, provides that every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, as specified.

The bill would make this relief unavailable for convictions of specified sex offenses that apply if the victim is a child 14 or 15 years of age or a dependent person. This bill would authorize the court, *in its discretion and in the interests of justice*, to afford a defendant that relief as to other charges to which these provisions apply if, after a lapse of one year from the date of pronouncement of judgment, ~~the court, in its discretion and in the interests of justice, determines that the defendant who is otherwise eligible for the relief should be granted the relief~~ *the defendant has fully complied with his or her sentence, is not currently serving a sentence for any offense, and is not under charge of commission of any crime.*

This bill would change an obsolete cross-reference that determines which misdemeanors are exempt from dismissal and relief pursuant to these provisions.

This bill would incorporate additional changes in Section 1203.4a of the Penal Code made by AB 2582 that would become operative if both bills are enacted and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.4a of the Penal Code is amended
2 to read:
3 1203.4a. (a) Every defendant convicted of a misdemeanor and
4 not granted probation shall, at any time after the lapse of one year
5 from the date of pronouncement of judgment, if he or she has fully
6 complied with and performed the sentence of the court, is not then
7 serving a sentence for any offense and is not under charge of
8 commission of any crime and has, since the pronouncement of
9 judgment, lived an honest and upright life and has conformed to
10 and obeyed the laws of the land, be permitted by the court to
11 withdraw his or her plea of guilty or nolo contendere and enter a
12 plea of not guilty; or if he or she has been convicted after a plea
13 of not guilty, the court shall set aside the verdict of guilty; and in
14 either case the court shall thereupon dismiss the accusatory
15 pleading against the defendant, who shall thereafter be released
16 from all penalties and disabilities resulting from the offense of
17 which he or she has been convicted, except as provided in Section
18 12021.1 of this code or Section 13555 of the Vehicle Code. ~~After~~

1 **(b)** After a lapse of one year from the date of pronouncement
2 of judgment, a court, in its discretion and in the interests of justice,
3 may ~~determine that a defendant who is otherwise eligible for the~~
4 ~~relief available under this section, should be granted relief under~~
5 ~~this section. The defendant shall be informed of the provisions of~~
6 ~~this grant the relief available pursuant to this section to a defendant~~
7 ~~convicted of a misdemeanor and not granted probation if he or~~
8 ~~she has fully complied with and performed the sentence of the~~
9 ~~court, is not then serving a sentence for any offense, and is not~~
10 ~~under charge of commission of any crime.~~

11 **(c)** The defendant shall be informed of the provisions of this
12 section, either orally or in writing, at the time he or she is
13 sentenced. The defendant may make an application and change of
14 plea in person or by attorney, or by the probation officer authorized
15 in writing; provided, that in any subsequent prosecution of the
16 defendant for any other offense, the prior conviction may be
17 pleaded and proved and shall have the same effect as if relief had
18 not been granted pursuant to this section.

19 This subdivision applies to convictions which occurred before
20 as well as those occurring after, the effective date of this section.

21 ~~(b)~~

22 **(d)** Subdivision (a) does not apply to a misdemeanor violation
23 of subdivision (c) of Section 288, or to any misdemeanor falling
24 within the provisions of ~~subdivision (b) of Section 42001~~ Section
25 ~~42002.1~~ of the Vehicle Code, or to any infraction.

26 ~~(e)~~

27 **(e)** A person who petitions for a dismissal of a charge under
28 this section may be required to reimburse the county and the court
29 for the cost of services rendered at a rate to be determined by the
30 county board of supervisors for the county and by the court for the
31 court, not to exceed sixty dollars (\$60), and to reimburse any city
32 for the cost of services rendered at a rate to be determined by the
33 city council not to exceed sixty dollars (\$60). Ability to make this
34 reimbursement shall be determined by the court using the standards
35 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
36 shall not be a prerequisite to a person's eligibility under this
37 section. The court may order reimbursement in any case in which
38 the petitioner appears to have the ability to pay, without undue
39 hardship, all or any portion of the cost for services established
40 pursuant to this subdivision.

1 ~~(d)~~

2 (f) Any determination of amount made by a court under this
3 section shall be valid only if either (1) made under procedures
4 adopted by the Judicial Council or (2) approved by the Judicial
5 Council.

6 SEC. 2. *Section 1203.4a of the Penal Code is amended to read:*

7 1203.4a. (a) Every defendant convicted of a misdemeanor and
8 not granted probation *and every defendant convicted of an*
9 *infraction*, shall, at any time after the lapse of one year from the
10 date of pronouncement of judgment, if he or she has fully complied
11 with and performed the sentence of the court, is not then serving
12 a sentence for any offense and is not under charge of commission
13 of any crime and has, since the pronouncement of judgment, lived
14 an honest and upright life and has conformed to and obeyed the
15 laws of the land, be permitted by the court to withdraw his or her
16 plea of guilty or nolo contendere and enter a plea of not guilty; or
17 if he or she has been convicted after a plea of not guilty, the court
18 shall set aside the verdict of guilty; and in either case the court
19 shall thereupon dismiss the accusatory pleading against the
20 defendant, who shall thereafter be released from all penalties and
21 disabilities resulting from the offense of which he or she has been
22 convicted, except as provided in Section 12021.1 of this code or
23 Section 13555 of the Vehicle Code. ~~The~~

24 (b) *After a lapse of one year from the date of pronouncement*
25 *of judgment, a court, in its discretion and in the interests of justice,*
26 *may grant the relief available pursuant to this section to a*
27 *defendant convicted of a misdemeanor and not granted probation*
28 *if he or she has fully complied with and performed the sentence of*
29 *the court, is not then serving a sentence for any offense, and is not*
30 *under charge of commission of any crime.*

31 (c) The defendant shall be informed of the provisions of this
32 section, either orally or in writing, at the time he or she is
33 sentenced. The defendant may make an application and change of
34 plea in person or by attorney, or by the probation officer authorized
35 in writing; provided, that in any subsequent prosecution of the
36 defendant for any other offense, the prior conviction may be
37 pleaded and proved and shall have the same effect as if relief had
38 not been granted pursuant to this section.

39 This subdivision applies to convictions which occurred before,
40 as well as those occurring after, the effective date of this section.

1 ~~(b)~~

2 (d) Subdivision (a) does not apply to *a misdemeanor violation*
3 *of subdivision (c) of Section 288, or to any misdemeanor falling*
4 *within the provisions of subdivision (b) of Section 42001 Section*
5 *42002.1 of the Vehicle Code, or to any infraction falling within*
6 *the provisions of Section 42001 of the Vehicle Code.*

7 ~~(e)~~

8 (e) A person who petitions for a dismissal of a charge under
9 this section may be required to reimburse the county and the court
10 for the cost of services rendered at a rate to be determined by the
11 county board of supervisors for the county and by the court for the
12 court, not to exceed sixty dollars (\$60), and to reimburse any city
13 for the cost of services rendered at a rate to be determined by the
14 city council not to exceed sixty dollars (\$60). Ability to make this
15 reimbursement shall be determined by the court using the standards
16 set forth in paragraph (2) of subdivision (g) of Section 987.8 and
17 shall not be a prerequisite to a person's eligibility under this
18 section. The court may order reimbursement in any case in which
19 the petitioner appears to have the ability to pay, without undue
20 hardship, all or any portion of the cost for services established
21 pursuant to this subdivision.

22 (f) *A petition for dismissal of an infraction pursuant to this*
23 *section shall be by written declaration, except upon a showing of*
24 *compelling need. Dismissal of an infraction shall not be granted*
25 *under this section unless the prosecuting attorney has been given*
26 *at least 15 days' notice of the petition for dismissal. It shall be*
27 *presumed that the prosecuting attorney has received notice if proof*
28 *of service is filed with the court.*

29 ~~(d)~~

30 (g) Any determination of amount made by a court under this
31 section shall be valid only if either (1) made under procedures
32 adopted by the Judicial Council or (2) approved by the Judicial
33 Council.

34 SEC. 3. *Section 2 of this bill incorporates amendments to*
35 *Section 1203.4a of the Penal Code proposed by both this bill and*
36 *AB 2582. It shall only become operative if (1) both bills are enacted*
37 *and become effective on or before January 1, 2010, (2) each bill*
38 *amends Section 1203.4a of the Penal Code, and (3) this bill is*

- 1 *enacted after AB 2582, in which case Section 1 of this bill shall*
- 2 *not become operative.*

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